1947. K. Examined

File No. S. Bel 3/49

Legal DEPARTMENT

A BRANCH

Subject:— Civil Suit No. 309 of 1948

1) Yeshwant Ramchandra Chopade
2) Ramchandra M. Chopade by Next friend
Versus
1) The Province of Bombay --- Defts.

For a declaration that the plaintiffs title to a property in the village of Hasabi Bhudeshi known as Khashag.

P. 7/F

File No. S. Bel 3/49

Gvt. Secty. Bldg 24-3

S. Bel 3/49

CONTENTS.

Legal Department File No. S. Bel. 3/49.

Sr. No.	Compilation No.	Subject	Pages.
		Suits Belgaum.	
		C. S. No. 369 of 1948.	
		yeshwant Ramchandra chopade by next friend and another vs. Province of Bombay.	
		For a declaration of the plffs title to a property in the village of Hosatti commonly known as Khasbag.	
		plaint.	
	1) L.D. GR. No. 6642 16-6-49.	Sanctioning the defence of the suit.	
		Written statement	
		Issu	

Reg. Suit No.369 of 1948

In the Court of the Civil Judge Sr, Dn At Belgaum.

1. Yeshavant Ramachandra Chopde, age 17, minor by next friend Ramachandra Maakappa Chppde age 55 Caste Devang Occupation Weaver, Resiaing at House No.59 Bazargalli Khasabag. — Plaintff

Vs.

1.Provincial Govt.of Bomba — Defendant.

Claim Rs.5/-

The Plaintiff above named begs state as under:-

Description of Property .-The house and the back yard bearing Municipal No.57 situated a t Bazargalli Khasabag measuring E.W. 26½', S.N. 64'

2. The immovable property mentioned above is situated in Khasbag, Belgaum which villgge is grated in Inam to one Mootoo Kumar Moodliar under a Samad by the Govt.ob Bombay dated 2-2-1880.

3. The said Samad congerred on the Inamdat or his heirs all the proprietory rights in the village that at the date of the Samad the Govt. possessssed.

4. The Plaintiff has been in possession of the suit property unde the permonent lease granted to him by thea Inamdars Samuel D. B.Tulsing on 16.10.1939 who was in possession of the same as per the rights conferred by the said Samad.

5. The plaint iff denies the allegation of the Deft. that Govt. as the proprietors of the said property and that the possession of the Plaintiff's occupation is unauthorised. The Plaintiff does not admit that the Govt. was ever in possession of suit property and that the possession if a any was in terms of the Samad in obedience to the existing arra gements in which good faith of the Govt. was conserved and the same obligation ceased long since many years as the place was never used either byMunicipality or Govt. for their use and must be deemed to have been surrendered to the rightful holders viz. Inamdars.

6. The Deft. though the collector,Belgaum , started proceedings under sec. 202 of the L.R.Code a nd inspite of the above contentions ordered notice of eviction L.G.N./S.R.523 dated 21.7.48

calling upon the Plaintiff to hand over the possession.

7. The plaintiff served a notice on the Govt. by handing over the copy of the Collector, Belgaum and the receipt dated 16-8-48 is duly sent to the Plaintiff. Therefore Plaintiff has filed this suit two months after the date of the said receipts

8. The cause of action arose when the Deft. threatened to evict the Plaintiff from the suit property i.e. on 21-7-48

9. The suit us being for the declaration and injunction valued for court fee at. Rs. 5/- and the minimum court fee stamp of Rs.6-4-0 is paid. The valuation for the jurisdiction is the same.

10. The suit property is situated at Khasabag in the limits of the jurisdiction of this court.

11. There is no city survey for the Khasabag and as such property register extract is not produced.

12.The Plaintiff prays that the contentions of the Deft.be set aside and

(a) That it be declared that Plaintiff is the pemanent Lessee of the suit House No. 57, Khasabag andas suah entitled to remain in possession under the terms of the lease. dated 16.10.1939.

(b) That the Deft. i.e. Govt. be restrained permanently from evicting the Plaintiff fromthe said land and house.

(c) That costs of the suit be granted .

(d) That any other relief that the court consoders proper be granted.

Belgaum.
Dated 18th Oct. 1948.

Plaintiff's next friend.

Drafted and presented

Pleader.

I, Ramachandra Mnappa Chopde next friend of minior Plaintiff do hereby state on affmirmation that the above contents are true to my own knowlegge and are correct.

Sd/- x x x
Plaintiff's Next Friend.

3 29

elgaum Civil Suit No. 369 of 1948.

The suit is for a declaration of the plaintiffs title to a property in the village of Hosatti commonly known as Khasbag. In 1941 the same plaintiff had filed suit No. 467 of 1941 for the same cause of action but that suit was dismissed for want of notice under section 80 of the Civil Procedure Code. He has therefore filed this new suit on the same cause of action after giving notice under such circumstances the suit is not barred as resjudicata. As proposed by the Collector, the defence of this suit may be sanctioned on the lines of the brief accompanying G.R., L.D. No. 5141 of 23-6-1942.

Slip A

RLL 11/5/1947

R.L.A. R 1315

Secy R.D. bnb 16.5.49.

REVENUE DEPARTMENT
SECRETARIAT, BOMBAY.
16/5/49
16/5/49
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A G.A.P. 15

5 33

Suits.
Belgaum.
For a declaration of the plaintiff's title to a properi in the village of Hosatti commonly known as Khasbag..

GOVERNMENT OF BOMBAY.

Legal Department,
Resolution No. 6642

Bombay Castle, 16th June 1949.

Letter from the Collector of Belgaum No. LAW 740, dated the 25th March 1949 - Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

In the Court of the Civil Judge, (Senior Division) Belgaum.
Civil Suit No. 369 of 1948.
Yeshwant Ramchandra Chopade by next friend Ramchandra M. Chopade ..... Plaintiff.
Vs.
The Province of Bombay ..... Defendant.

Memorandum to the District Government Pleader, Belgaum, No. 5760, dated the 23rd May 1949 - Forwarding a copy of the brief accompanying Government Resolution, Legal Department No. 5141 dated the 23rd June 1942.

RESOLUTION :- Sanction is accorded to the defence of the suit on the lines of the brief accompanying Government Resolution, Legal Department No. 5141, dated the 23rd June 1942.

By order of the Governor of Bombay.

original.

R M Mehta 15
R. M. Mehta,
Asstt Secretary to Government.

To

The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

Submitted for approval.

KVV/-
13/6.

20/6

PGS 16/6/49

A.S. I will sign in Hindi please except.

20/6

The G.R. has been corrected

R.L.A. 20/6

A.S.

Reg. Suit No. 369 of 1942.

In the Court of the Civil Judge, S. Dn.

Belgaum.

1. Yeshvant Ramachandra Chopade, age 17, minor by next friend Ramachandra Manakappa Chopade, age 55, Caste Dewang, Occ, Weaver, Residing at House No. 59, Bagargalli, Khasbag. } Plaintiff.

Vs.

1. Province of Bombay. .... Defendant.

Herein the Written Statement of deft - is as follows:

1) The defendant denies the plaintiff's claim in toto.

2) The suit is bad for want of a valid and proper notice as required by section 80 of the Civil Procedure Code.

3) The present suit by next friend of the minor plaintiff is not maintainable. The next friend gave a notice of suit No. 467/1941 against the defendant in this very Court, in which the minor's age was given as 11 years. The plff should be put to proof of his alleged minority.

4) The Inamdar of Khasbag is a necessary party to the ~~xxx~~ suit as the plff claims title to the suit property as his lessee.

5) It is denied that Inamdar ever acquired any title to the suit property. Plaintiff who ~~xxxx~~ only claims though the Inamadar can have therefore no title to the same.

6) Since 1853 & up to 1909, the suit poperty was in the possession and open enjoyment of the Belgaum Municipality by virtue of a grant by Government in favour of the said Municipality. Since 1909 the suit propert has been in continuous possession of the Government until its unauthorised occupation by the plff some time in Februcry 1940.

7) Assuming without admitting that the Inam... ... ... right to the suit property, the same has been extinguished under section 28 of the Indian Limitation Act read with articles 142, and 144 of schedule 1 of the said Act and Government became owner of the same by adverse possession.

8) The plff being a trespasser, is liable to be evicted under section 202 of the Land Revenue Code.

9) The proceedings for eviction which are being taken by Government against the plff under the Land Revenue Code, are perfectly regular and legal and plff is not entitled to the declaration and injunction asked for (in the plaint

District Government Pleader,
Belgaum.

I, B.V.Jakati, Esqr. District Government Pleader, Belgaum, do hereby declare that what is stated in para-graphs 1 to 9 above is true according to the informat received and believed to be true. This verification is made at Belgaum, on the day of , 1949.

District Government Pleader,
Belgaum

11

Reg.O.S.No. 369 of 1948

Issues. Ex. 25.

1. Whether plff proves that his land lord is the owner of the suit property?
2. If so, whether that title of Plff's land-lord was extinguished under Articles 28, 142 and 144 of Limitation Act as contended?
3. Whether the notice served is valid and proper under section 80 of C.P.C ?
4. Whether Plff is a minor and if not, whether the suit in its present form tenable?
5. Whether plff proves his possession before suit ?
6. Whether plff is entitled to the declaration and permanent injunction?
7. Whether the Inamadar of Khasbag is a necessary party?

No more sought.

Belgaum,
27-9-49.

Civil Judge, S.D. Belgaum